

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

JOHN GERARD QUINN,

Plaintiff,

v.

JESUS DAMIAN GUERRERO, et al.,

Defendants.

§
§
§
§
§
§
§
§

CASE NO. 4:09CV166

**MEMORANDUM ADOPTING REPORTS AND
RECOMMENDATIONS OF THE UNITED STATES MAGISTRATE JUDGE AND
ORDER DENYING MOTION FOR RECONSIDERATION**

Came on for consideration the reports of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636.

On August 4, 2016, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendants Jesus Damian Guerrero, Rex Redden, Jason Norton, Donnie Williams, Aaron Smith, Joel Purser, and Doe Defendant's Motion to Dismiss the Individual Defendants Based on the Statute of Limitations (Dkt. 75) should be GRANTED, that Plaintiff's claims against Jesus Damian Guerrero, Rex Redden, Aaron Smith, Donnie Williams, Jason Norton, Joel Purser and Doe Defendant should be dismissed with prejudice, and that Defendants' Motion to Dismiss Based on *Res Judicata* (Dkt. 79) and Motion to Dismiss Based on *Heck v. Humphrey* and Qualified Immunity (Dkt. 91) as to those officer defendants should be DENIED as MOOT. *See* Dkt. 106.

On August 9, 2016, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendant City of McKinney, Texas' Motion to Dismiss Plaintiff's Claims (Dkt. 74) should be GRANTED and that Plaintiff's claims against the City of McKinney should be dismissed. *See* Dkt. 107.

Plaintiff has filed objections to both of the Magistrate Judge's reports (*see* Dkts. 109 & 111). Plaintiff has also filed a Motion for Reconsideration or, in the Alternative, for Leave to File Interlocutory Appeal (Dkt. 110). In his motion, Plaintiff seeks reconsideration of an October 30, 2008 order entered by the state court prior to the removal of this case and relied upon by the Magistrate Judge in his recommendations. Plaintiff argues that the state court misinterpreted controlling Texas law and that the state court either interpreted the Texas Tort Claims Act in an unconstitutional manner or that the state statute is unconstitutional on its face.

The court has made a *de novo* review of the objections raised by Plaintiff and is of the opinion that the findings and conclusions of the Magistrate Judge in his reports and recommendations regarding the motions to dismiss are correct. Plaintiff's objections re-urge arguments which were fully briefed and considered by the Magistrate Judge. The Magistrate Judge's analysis is detailed and supported by authority, and Plaintiff's objections are without merit as to the ultimately recommendations. Therefore, the court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

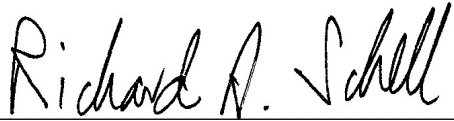
As to Plaintiff's motion for reconsideration, it (Dkt. 110) is DENIED. The record in this suit contains significant briefing and analysis regarding the October 30, 2008 order entered by the state court and Plaintiff's challenges, including his claims of unconstitutionality, are brought too late to

warrant re-consideration by this court. The Magistrate Judge's analysis of the state court order is supported by applicable authority and the court has adopted the Magistrate Judge's analysis in full herein. Further, because the court is disposing of Plaintiff's claims in their entirety, there is no need for an interlocutory appeal and that alternative request is therefore denied as moot.

Defendants Jesus Damian Guerrero, Rex Redden, Jason Norton, Donnie Williams, Aaron Smith, Joel Purser, and Doe Defendant's Motion to Dismiss the Individual Defendants Based on the Statute of Limitations (Dkt. 75) is GRANTED, and Plaintiff's claims against Jesus Damian Guerrero, Rex Redden, Aaron Smith, Donnie Williams, Jason Norton, Joel Purser and Doe Defendant are dismissed with prejudice. Defendants' Motion to Dismiss Based on *Res Judicata* (Dkt. 79) and Motion to Dismiss Based on *Heck v. Humphrey* and Qualified Immunity (Dkt. 91) as to those officer defendants are DENIED as MOOT. Further, Defendant City of McKinney, Texas' Motion to Dismiss Plaintiff's Claims (Dkt. 74) is GRANTED and Plaintiff's claims against the City of McKinney are dismissed with prejudice.

IT IS SO ORDERED.

SIGNED this the 26th day of August, 2016.



RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE